

§ 838.1017 Cost-of-living adjustments.

In cases where the court order appor-tions a percentage of the employee re-tirement benefit, the Associate Direc-tor will initially determine the amount of proper payment. That amount will be increased by future cost-of-living in-creases unless the court directs other-wise.

§ 838.1018 Settlements.

The former spouse may request that an amount be withheld from the retire-ment benefits that is less than the amount stipulated in the court order. This lower amount will be deemed a complete fulfillment of the obligation of OPM for the period in which the re-quest is in effect.

APPENDIX A TO SUBPART J OF PART
838—GUIDELINES FOR INTERPRETING
STATE COURT ORDERS DIVIDING
CIVIL SERVICE RETIREMENT BENE-
FITS

UNITED STATES OF AMERICA

OFFICE OF PERSONNEL MANAGEMENT

RETIREMENT AND INSURANCE GROUP

GUIDELINES FOR INTERPRETING STATE COURT
ORDERS DIVIDING CIVIL SERVICE RETIRE-
MENT BENEFITS

These guidelines explain the interpretation that the Office of Personnel Management (OPM) will place on terms and phrases frequently used in dividing benefits. These guidelines are intended not only for the use of OPM, but also for the legal community as a whole, with the hope that by informing at-torneys, in advance, about the manner in which OPM will interpret terms written into court orders, the resulting orders will be more carefully drafted, using the proper lan-guage to accomplish the aims of the court.

A substantial number of State court orders are drafted under the mistaken belief that the Employee Retirement Income Security Act (ERISA) (29 U.S.C. 1001 *et seq.*) applies to CSRS benefits. Sections 1003(b)(1) and 1051 of title 29, United States Code, exempt CSRS from ERISA, because CSRS is a “govern-mental plan” as defined in section 1001(23) of title 29, United States Code. Accordingly, OPM does not honor ERISA Qualifying Do-mestic Relations Orders (QDRO’s) except to the extent that the law governing CSRS ex-pressly authorizes compliance with State court orders. OPM will honor the orders to the extent permitted by CSRS. However, many provisions of ERISA QDRO’s are not authorized under CSRS. Most significantly, a

court cannot require that payments to the former spouse begin before the employee ac-tually retires (i.e., begins to receive benefits) and, unless the order expressly provides that the former spouse is entitled to a survivor annuity, the payments to the former spouse cannot continue after the employee dies.

I. COMPUTATIONS GENERALLY

A. Adjustments affecting court-awarded bene-fits. 1. Orders that award adjustments to a former spouse stated in terms such as “cost-of-living adjustments” or “COLAs” occur-ring after the date of the decree but before the date of retirement will be interpreted to award increases equal to the adjustments de-scribed in or effected under section 8340 of title 5, United States Code.

2. Orders that award adjustments to a former spouse stated in terms such as “sal-ary adjustments” or “pay adjustments” oc-curring after the date of the decree will be interpreted to award increases equal to the adjustments described in or effected under section 5303 of title 5, United States Code until the date of retirement.

3. Unless otherwise specified in the order, adjustments described in section 8340 of title 5, United States Code will be applied after the date of retirement.

B. Application of COLAs. 1. Unless the court directly and unequivocally orders otherwise, decrees that divide annuities either on a per-centage basis or by use of a formula will be interpreted to entitle the former spouse to salary adjustments occurring after the date of the decree and cost-of-living adjustments occurring after the date of the decree or oc-curring after the date of the employee’s re-tirement, whichever comes later.

2. On the other hand, decrees that award a former spouse a specific dollar amount from the annuity will be interpreted as excluding salary and cost-of-living adjustments after the date of the decree, unless the court ex-pressly orders their inclusion.

3. Orders that contain a general instruc-tion to calculate the former spouse’s share effective at the time of divorce or separation will not be interpreted to prevent the inclu-sion of salary adjustments occurring after the specified date. To prevent the applica-tion of salary adjustments after the date of the divorce or separation, the decree must either state the exact dollar amount of the award to the former spouse or specifically state that salary adjustments after the spec-ified date are to be disregarded in computing the former spouse’s share.

4. Orders that require OPM to compute a benefit as of a specified date, and specifically state that salary adjustments after the spec-ified date are to be disregarded in computing the former spouse’s share will not be inter-preted to prevent the application of COLAs